IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTER PATENT APPEAL NO.179 OF 2002

IN

WRIT PETITION NO.7331 OF 1999

...

M/s.M.Jawahar Hospital
Barshi Nagar Palika, Barshi
District: Solapur ...Appellant

v/s.

Shri Vazir Babulal Tamboli ...Respondent

...

Mr.Nitim Jamdar for the Appellant.

Mr.I.M.Khirdi for the Respondent.

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CORAM: D.K.DESHMUKH &

V.M.KANADE, JJ.

DATED: 6TH DECEMBER, 2007

P.C.:

1. By this Appeal the Appellant challenges the order passed by the learned single Judge of this Court in Writ Petition No.7331 of 1999. By that order the learned single judge dismissed the writ petition filed by the Petitioner. Writ Petition filed by the Petitioner was directed against the order dated 17-11-1998 passed by the Labour Court, Solapur, whereby the Labour Court held that the Appellant has illegally terminated the services of the Respondent-workman with effect from 1-8-1995. The termination was found by the Labour Court to be in violation of Section 25-F of the Industrial Disputes Act. Therefore, reinstatement with full backwages was ordered.

2. The learned single Judge found that the Labour Court had passed an order directing the Appellant to produce certain documents. Despite that order the Appellant did not produce the documents. Therefore, adverse inference was drawn and a finding was recorded that the Respondent has completed 240 days

of continuous service during the period of twelve months before receiving the termination order.

3. The only question that appears to have been argued before the learned single Judge was, whether there was enough material on record to show that 240 days service was completed by the Respondent. The learned single Judge has considered the entire evidence in detail and has held that no fault can be found with the judgment of the Labour Court and therefore, writ petition was dismissed.

4. In the Appeal, there is no interim order granted, with the result, we have been informed by the learned Counsel appearing for the Respondent that the Respondent has been reinstated in the service.

5. We have heard the learned Counsel appearing for the Appellant at length. One of the documents the Municipal Council was directed to produce by the court was the muster role. The Municipal Council did not produce the muster role before the Court. It is impossible to believe that the Municipal Council does not maintain the muster role.

6. It was also argued that the order for payment of back wages could not have been made by the Labour Court.

7. Perusal of the order of the learned single Judge shows that this contention has not been urged before the learned single Judge. In our opinion, therefore, the Appellant cannot be permitted to raise this contention for the first time in this Appeal. The learned counsel submitted that the Labour Court should not have made an order of reinstatement, as the Respondent was not appointed by following due process of law. This contention does not appear to have been raised before the learned single Judge and therefore, cannot be permitted to be raised. In any case, the Labour Court was not granting permanency in the employment to the Respondent. The Labour Court had held that the Respondent had completed 240 days of continuous service during the 12 months preceding the termination and therefore it was obligatory on the part of the Appellant to comply with provisions of Section 25(F) of the Industrial Dispute Act.

8. In our opinion, finding of fact recorded by the Labour Court which is confirmed by the learned single

Judge cannot be faulted. In our opinion, considering further that the order of the Labour Court has already been implemented, in as much as, the Respondent has been reinstated, it will not be in the interest of justice to interfere with the order of the Labour Court. The Appeal is, therefore, dismissed.

(D.K.DESHMUKH, J.)

(V.M.KANADE, J.)